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WEITERE INFORMATIONEN OK

An unending variety of topics

Sunday, September 07, 2008

The principle of least authority

I've written an article on my application of the principle of least authority to the interpretation of legal language. I argue that the United States Constitution, according to its original meaning, instructs judges to construe federal statutes, regulations, executive orders, and other official acts, as well as the Constitution itself, to confer the least authority consistent with their language.

This article is based on a longer paper on the origins of the non-delegation doctrine I wrote for law school. That paper highlights a little-known debate on the non-delegation doctrine applied to the question of whether Congress could delegate the power to define postal roads. James Madison, among others, argued that this was an unconstitutional delegation of legislative power to the executive.

Posted by Nick Szabo at 4:47 PM

2 comments:

David Mercer said...

Oh ye gods, don't even get me started about improper delegation of authority by Congress to the Executive...oh wait, too late, I've already started!

You know how, as they say, the devil is in the details? Where are the details of Statutes passed by Congress hammered out? In almost all legislation passed for decades now, by the Executive Branch entity that ends up writing the regulation implementing it, as Congress has merely passed an 'authorizing statute' in most cases.

And then the backroom dealing can take place, and merit just a little line in the Federal Register. Unless the ACLU, EFF, Interesting People, Politech, or the bloggers get ahold of it and letter-storm the comment period before the rule-making. But in the pre-Internet days, activists could rarely be mobilized quickly enough or with sufficient force.

2:23 AM

Pages

- Home

About Me

Nick Szabo

"A premier thinker about history, law and economics, and the lessons they have for security." -- Adam Shostack, Emergent Chaos

"Szabo comes out with these essays that leave me in awe." -- Brian Dunbar

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"Like most blogs worth my attention, this blog is updated only infrequently. That is because the authors of blogs worth my attention only post when they have something to say that is true, relevant and not already known by their audience. Most of the human race does not have the skill to know when an idea has these three properties. The skill is particularly rare in the fields of politics and economics, which is why this blog is such a rare and valuable thing." -- Richard Hollerith

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Nick Szabo said...

Alas, backroom dealing between lobbyists is also the typical way statutes themselves are created. Congress typically just ratifies what the "stakeholders" (i.e. K Street lobbyists) hammered out. Usually the legislators themselves reading little if any of the bill.

Having been exposed to some of this process here in D.C., I'm now amazed by how abstract and futile most political debate. The typical debate grossly mischaracterizes the actual statutory language at issue. Now that we have the Web, it would be nice if what has been standard for software engineers now became standard for politics -- "read the source!"
For example, the largest reforms to the patent laws since 1952 are in the works and can be found here.

James Madison, among other founders, thought that delegating too much rule-making authority to the executive was unconstitutional. He and other founders took part in any early debate on this topic which I describe in The Origins of the Non-Delegation Doctrine.

6:42 PM

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- ► 2018 (1)
- ► 2017 (3)
- ► 2016 (4)
- ► 2015 (3)
- ► 2014 (3)
- ► 2013 (3)
- ► 2012 (8)
- ► 2011 (12)
- ► 2010 (9)
- ► 2009 (29)
- ▼ 2008 (55)
  - ► December (2)
  - ► October (2)
  - ▼ September (4)
    - Patent goo: self-replicating Paxil
    - The kula ring
    - A letter from the industrial revolution
    - The principle of least authority
  - ► August (9)
  - ► July (4)
  - ► June (6)
  - ► May (6)
  - ► April (4)
  - ► March (10)
  - ► February (5)
  - ► January (3)
- ► 2007 (47)
- ► 2006 (130)
- ► 2005 (44)

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